Supreme Court, U.S.
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NO. 06-913

IN THE SUPREME COURT OF THE UNITED STATES

DONNA ADAMS – HEDRICK,

Petitioner,

ROBERT HEDRICK,

Petitioner,

v.

LIBERTY MUTUAL INSURANCE COMPANY,

Respondent

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Texas State Court, the United States District Court and the 5th Circuit Court of Appeals violate the due process rights of a disabled person (Donna Adams Hedrick) by failing to recognize the status of Robert Hedrick to represent her under properly executed power of attorney, as her next best friend or as her guardian or in lieu of this appoint a guardian ad litem to represent her interests prior to having any hearings and issuing any orders in the respective cases?

2. Does the administrative rules of the Texas Workers' Compensation Act, Title 5, Subtitle A, Section 410.006 which allows non-attorney representation before administrative hearings and Texas Government Code, Chapter 81 which prohibits non-attorney representation in state and federal courts (that are a part of the appeals process for the administrative hearing) create a common practice which violates the constitutional guarantees of due process and fair trial for disabled persons and in specific Donna Adams Hedrick by denying that person of the representative who was most knowledgeable of the facts of the case for an attorney who may not know as much as the original representative giving prejudicial and unfair advantage to the insurance company?

3. Did the United States District Court and the 5th Circuit Court of Appeals judges act outside of their mandate as administers of justice and react as ministers of justice by issuing sanctions and costs against Hedrick's as a method to "silence" the attempts to challenge state laws and non-attorney representation?

4. Did the 5th Circuit Court of Appeals err in dismissing the case without first dealing with the constitutional issues or due process, representation, and protection of fair and equal access to the courts by a disabled person?

5. Did the 5th Circuit Court of Appeals and the district court unfairly issue sanctions and costs against Hedrick's?

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Donna Adams-Hedrick and Robert Hedrick, respectfully petitions for a writ of certiorari to review the judgments of the Fifth Circuit, the United States District Court and the Texas State Court. This case is complicated in that there were two (2) separate injuries involved.

For the first injury the Texas Workers' Compensation Commission made a ruling on which an appeal to the state court **could** be taken.

For the second injury the Texas Workers' Compensation Commission **made no ruling that** would allow LIBERTY MUTUAL INSURANCE COMPANY to take an appeal to the state court. The only statement made by the Texas Workers' Compensation Commission was that LIBERTY MUTUAL INSURANCE COMPANY **was not relieved of liability for the second injury**.

Accordingly, the damages for the second injury, including life long lose of wages, can only be awarded by the United States District Court where original jurisdiction for the second injury lies. The United States District Court and the 5th Circuit Court of Appeals failed to recognize this fact. The second injury was the subject of the removal to federal court in **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas). The district court and the court of appeals erred in their judgments.

The case is further complicated by the fact that the state, federal district court and federal appeals court erred in not first dealing with proper representation for Donna Adams Hedrick (a disabled person) before making decisions in the case; despite the pleas and begging of both Donna Adams Hedrick and Robert Hedrick to do so. In failing to first deal with proper representation by making a clear and precise statement of the status of Hedrick under properly executed power of attorney or appointing a

guardian ad litem; the court denied due process to Donna Adams Hedrick (a disabled person).

Petitioners believe that the court was "blinded" by the desire to protect the "status quo" of the attorney/court relationship and acted outside of the courts mandate to attempt to intimidate the Hedrick's by issuing sanctions and threats to stop their attempts to protect the constitutional rights of Donna Adams Hedrick to a fair and equal hearing with the representation of her choice or to appoint a court appointed representative for her as an incompetent person (a fact that has not been contested by either the court or the parties of the case).

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at **APPENDIX A.**

The order of the United States District Court appears at **APPENDIX B.**

The order of the United States District Court appears at **APPENDIX C.**

Transcript of Proceedings - Kenneth Hoyt on July 25, 2005 appears at **APPENDIX D.**

Recusal Order of Kenneth M. Hoyt on November 16, 2006 appears at **APPENDIX E.**

The order of the Texas 239th Judicial District Court appears at **APPENDIX F.**

JURISDICTION

Donna Adams Hedrick and Robert Hedrick are invoking the Supremacy Clause of the United States Constitution and invoke the Court's original jurisdiction under Article III of the Constitution of the United States. The judgment of the court of appeals was entered on September 15, 2006. The jurisdiction of this Court is also invoked under 28 U.S.C. § 1254(1).

Petitioners are challenging the actions, lack of action and orders of the 5th Circuit Court of Appeals, the United States District Court and the 239th Judicial District Court of Texas as being "unconstitutional" in that all of these orders were issued prior to any attempts to protect the rights of a disabled person to due process and equal access to the courts. The United States Supreme Court has jurisdiction to remedy these errors.

Petitioners are challenging the actions and order's of the judges at the federal level as "outside of both their mandate and their discretionary powers"; in that the removed case **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas) constitutes an separate injury and issues not related to case **Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas).

The circumstances surrounding **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas) **were not appealable** by LIBERTY MUTUAL INSURANCE COMPANY from the state administrative hearing to the state court.

The August 17, 2000 injury and issues contained in **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas; separated by the 239th Judicial District Court on Jan. 26, 2004) from **Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas) should have been filed separately in the United States District Court under it's original jurisdiction.

The removal of these "separated" issues and injury to the district court by the Hedrick's constituted, in fact, an original filing and was not in any way associated with the issues in **Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas) since they originate from different circumstances. Therefore, all orders issued by both the District Court and 5th Circuit Court of Appeals are a violation of constitutional rights to due process.

Petitioners are challenging Texas state statutes and administrative rules that create a **"common practice"** which has caused prejudicial and detrimental treatment of millions of disabled persons by the judicial systems at both the state and federal levels denying these disabled persons their due process rights and to equal access to the courts based upon their mental, physical, and financial disabilities.

This **"common practice"** creates an inequitable position giving **"insurance companies"** and their **"corporate partners"** overwhelming and distinct advantages on appeals into the judicial system from the decisions of state administrative hearings. These advantages allow **"insurance"** companies to gain an "unfair" advantage to win law suits at the expense of the disabled person who is without resources to hire an attorney to represent them and who cannot, as prohibited by law, continue with their non-attorney representative, from the administrative hearing, as their representative to the end of the appeals process. Even though, this non-attorney may have won for them at the administrative hearing and is the most knowledgeable person on their injury and case.

A challenge to state law under the supremacy clause of the Federal Constitution is a federal question case within District Court Jurisdiction under 28 USC § 1331[1] The United States District Court and the 5th Circuit Court of Appeals ruled outside of their mandate and refused to hear any of these questions. The Supreme Court of the United States is the only court with the jurisdiction to remedy these errors.

The state of Texas laws regarding non-attorney representation in courts and the statutes regarding the allowed representation of non-attorney's in administrative hearings before the Texas Workers' Compensation Commission is not ambiguous, therefore, the district court, the court of appeals and the United States Supreme Court cannot abstain from deciding the constitutionality of this **"common practice"** set up by the State of

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[1] Fouke v. Mandel (1974, DC Md) 386 F Supp 1341.

Texas combining administrative hearing rules and state laws that harm disabled persons.[2]

Where there is no ambiguity in state law, the federal court should not abstain but should proceed to decide the federal constitution claim.[3] This remains true even if the state statute could be challenged in state court under a state constitutional provision essentially identical to the federal constitutional provision.[4]

Determination of the constitutionality of the Texas laws and statutes and the resulting court orders being challenged herein remains under the original jurisdiction of the United States Supreme Court to decide.

The Supreme Court has jurisdiction to review state court decisions in which the validity of a state statute is drawn into question on the ground of its being repugnant to the Constitution, treaties or laws of the United States.[5]

Petitioners invoke the powers of the United States Supreme Court pursuant to the All Writs Statute (28 USC 1651 [a]) to request that the United States Supreme Court issue all writs necessary or appropriate in aid of its jurisdiction and agreeable to the principles of law and request that the United State Supreme Court review any and all issues presented by the case including but not limited to removal of the entire case to the United States Supreme Court.[6] The United States Supreme Court has original jurisdiction over this case.

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[2] *See* **Spector Motor service, Inc. v. Mclaughlin**(1944) 323 US 101, 89 L. Ed 101, 65 S Ct 152 on remand (DC Conn) 88 F Supp 711, revd on other grounds (CA2 Conn) 181 F 2d 150, revd on other grounds 340 US 602, 95 L Ed 573, 71 S Ct 508 (ovrd on other grounds **Complete Auto Transit, Inc. v. Brady** 430 US 274, 51 L Ed 2d 326, 97 S Ct 1076, reh den 430 US 976, 52 L Ed 2d 371, 97 S Ct 1669

[3] **Wisconsin v Constantineau** (1971) 400 US 433, 27 L Ed 2d 515, 91 S Ct 507.

[4] **BT Invest. Managers, Inc. v Lewis** (1977, CA5 Fla) 559 F2 950.

[5] 28 USC §§ 1257 (2), 1257 (3).

[6] **House v. Mayo** (1945) 324 US 42, 89 L Ed 739, 65 S Ct 517, reh den 324 US 886, 89 L Ed 1435, 65 S Ct 681.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive a person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Donna Adams-Hedrick, as a disabled person, had all expectations that her rights to equal access to the courts would be protected at both the State and the Federal levels under the provisions of the United States Constitution.

Petitioner was soon to find that this was not the case at either the State or the Federal level and this case is now presented to the Supreme Court of the United States to determine if her rights were violated.

This is a case in which Petitioner suffered two (2) separate injuries while on-the-job. One injury sustained on March 29, 2000 and the second injury on August 19, 2000.

As a result of these combined injuries Donna Adams Hedrick is disabled to a condition that it is life threatening for her to attend any hearings or subject herself to "smells", heat or stress without risking death. Her mental capacity prevents her from representing herself. Both the State and Federal Courts were advised of this condition. Accordingly, a properly executed power of attorney (under the laws of the State of Texas) was grant to Robert Hedrick (spouse) to represent her (as if her were her) in all legal matters.

Both injuries were timely reported to the Texas Workers Compensation Commission (hereinafter referred to as TWCC). The TWCC ruled in favor of Donna Adams for the injury on

March 29, 2000 making this decision subject to appeal to State court. The Texas Workers Compensation Commission made no ruling on the injury of August 19, 2000 that would allow it to be appealed to State court. However, the TWCC did not relieve the insurance carrier of responsibility for the second injury.

The carrier inappropriately tried to combine the second injury to the first injury in its appeal. Petitions allege that original jurisdiction for the August 19, 2000 lies in the Federal courts and may be tried at the same time in Federal Court as the March 29, 2000 injury is tried in State court.

Petitioners have removed the August 19, 2000 injury to Federal court. It is from the decisions of the district and appeals court that Petitioners now petition the Supreme Court of the United States.

Petitioners believe that the rights of Donna Adams-Hedrick (a disabled person), under the Fourteenth Amendment, have been violated by a "common practice" within the State of Texas which allows non-attorney representation before administrative hearings yet prohibits that same non-attorney to continue to the end of the appeals procedures which goes into State or even Federal Court; giving unfair advantages to the insurance carrier who has unlimited resources while the "disabled person" has little or none.

Petitioners requested that the courts at both the State and Federal levels to recognize the "status" of Robert Hedrick to represent his "disabled" and "incompetent" wife under properly executed power of attorney, as spouse or as next best friend or, in lieu of this, to appoint a Guardian ad Litem to protect her interests.

The courts at both the State and Federal Level not only failed to do this; but instead, chastised and sanctioned, both Donna Adams-Hedrick and Robert Hedrick for seeking to have the court protect the rights of Donna Adams Hedrick to a fair and equal trial and to the representation of her choice. Neither the State nor the Federal courts have ruled that the power of attorney granted to Robert Hedrick, out of medical necessity, is an invalid instrument.

It is with this background that this case is brought to the Supreme Court of the United States for review.

REASONS FOR GRANTING PETITION

Donna Adams Hedrick sustained an injury caused by exposure to formaldehyde, toxic epoxy resins, airborne resin and formaldehyde laden dust, on the job, on March 29, 2000 **(00071055-01)** to which the Texas Workers' Compensation Commission ruled **(APPENDIX G, page 31a & 32a)** that:

> **"Claimant had disability from March 30th, 2000 through April 20, 2000 and again from August 19, 2000 to date of this hearing....Claimant is entitled to temporary income benefits for all periods of disability through the date of maximum medical improvement."**
>
> **"Carrier is ordered to pay medical and income benefits in accordance with this decision, the Texas Workers' Compensation Act and the Commission's Rules."**

Donna Adams Hedrick has not been determined to have reached **"maximum medical improvement"** yet Liberty Mutual Insurance Company has stopped all payments for medical expense and income benefits causing damages to Donna Adams Hedrick in excess of $100,000.

Donna Adams Hedrick sustained an injury, on the job, on August 17, 2000 **(X2153405-01)** to which the Texas Workers' Compensation Commission ruled **(APPENDIX G, page 31a)** that:

> **"Claimant did not sustain a compensable injury on August 17, 2000, and therefore did not have disability resulting from the claimed injury. Carrier is not relieved of liability for the claimed injury of August 17, 2000, because it was timely reported."**
>
> **"Carrier is not liable for benefits and it is so ordered."**

Donna Adams Hedrick has sustained "lifetime" damages in excess of one (1) million dollars as a result of this the August 17, 2000 injury.

The Texas Workers' Compensation Act, Title 5, Subtitle A, Section 410.006 states that:

> **"(a) A claimant may be represented at a benefit review conference, a contested hearing, or arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work fro an attorney or receive a fee. An employee of an attorney may represent a claimant if that employee: (1) is a relative of the claimant; and (2) does not receive a fee."**

Robert Hedrick successfully represented his wife before the Texas Workers' Compensation Commission, presented evidence, and examined witnesses resulting in a favorable ruling in favor of Donna Adams Hedrick.

Robert Hedrick has received no compensation or re-imbursement of any costs or fees for any actions taken by him on behalf of Donna Adams Hedrick as authorized under properly executed power of attorney under the Texas Health & Safety Code § 166.152, 166.164 and the Texas Probate Code Chapter 12 § 490. Neither the state court nor the federal court has ruled that the Durable Power of Attorney, properly executed under the Texas Health & Safety Code § 166.152, 166.164 and the Texas Probate Code Chapter 12 § 490 by Donna Gail Adams (Hedrick) on October 2, 2000 **(APPENDIX H)** granting Robert Hedrick power of attorney to represent Donna Adams (Hedrick) in all legal, business and health matters (as if he were her) is an invalid or illegal document.

The Texas Workers' Compensation Act § 410.301 states that:

> **"(a) Judicial review of a final decision of the appeals panel regarding compensability or eligibility for or the amount of income or death benefits shall be conducted as provided by this chapter. (b) A determination of**

benefits before a court shall be in accordance with this subtitle."

The only reviewable ruling of the Texas Workers' Compensation Commission to which Liberty Mutual Insurance Company may take to the court is the ruling on the injury sustained on March 29, 2000 **(00071055-01)** which ruled in favor of Donna Adams Hedrick. This was done by Liberty Mutual Insurance Company in **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas) after the appeals panel failed to issue any ruling on the appeal.

There is no ruling issued by the Texas Workers' Compensation Commission surrounding the injury of August 17, 2000 **(X2153405-01)** from which Liberty Mutual Insurance Company may appeal to the state court. The United States District Court has original jurisdiction over this injury and the damages surrounding this injury separate from the injury sustained on March 29, 2000. Donna Adams Hedrick has a due process right to invoke the federal district courts "original jurisdiction" and separate the issues surrounding the August 17, 2000 injury from the injury of March 29, 2000. The federal district court and the 5th circuit court of appeals has denied Donna Adams Hedrick her due process rights to do this by failing to issue an order separating this injury from the one on March 29, 2000 under it's original jurisdiction. Liberty Mutual Insurance Company has fraudulently attempted to include it into the same suit as the March 29, 2000 injury to attempt to prevent separate suit by Donna Adams Hedrick for the second injury.

Petitioners allege that the United States District Court acted "outside of it's mandate" by remanding the case back to the state court and issuing sanctions and costs in an "deliberate attempt" to protect the status quo of attorneys without first "dealing with" the legality of the "power of attorney", status of Robert Hedrick to represent his "disabled spouse" either under the power or attorney or as next best friend or in lieu of this "appointing a guardian ad litem" to represent her best interests as provided by federal

statutes.[7] The 5th Circuit Court of Appeals failed to hear on any of the issues by dismissing the case outright.

The District Court and the 5th Circuit Court of Appeals failed to issue an order to the state court to protect her interests to due process and equal access to the courts. Instead, petitioners allege that the court was **"blinded"** by the thought of **"having to deal with the issue of representation in appeals from administrative hearings that could affect the status quo of attorneys"** and sought **"instead"** to "silence" Robert Hedrick by intimidation, sanctions and threats of criminal punishment to avoid dealing with the "constitutional issues' surrounding the case.

This **"blind justice"** is very clearly reflected in the statements and actions of the Honorable Judge Kenneth Hoyt in the hearing conducted (without regard to representation for Donna Adams) on July 25, 2005 **(Appendix D):**

MS. MARKANTONIS: Yes, Your Honor, I noticed that too. And for the record, I don't have any objection to hold the hearings with Adams and Hedrick by phone on their part.

THE COURT: I have a problem with that. I need to look at the man who's filing these proceedings and practicing law without a license, and I'm concerned about that, and these things have a way of developing into things that are way beyond what we would like to see happening at the courthouse because, generally, the frustration and anger turns away from Liberty Mutual and then toward the Courts. And when it does that, it does concern me. If she's able to go to work, leave the house, she's certainly able to come to the courthouse. So, what do you want? What action do you want?

MS. MARKANTONIS: Well, Your Honor, I'd like to have the case remanded back to state court, and I'd like to have sanctions entered against Adams and Hedrick from filing anything further in federal court unless a federal court judge inspects their pleadings. And if they're found to be not frivolous, then they can

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[7] FRCP 17 (c).

proceed with the action. But if they're frivolous, I'd like for them all to be dismissed immediately without having to have my clients defend them.

THE COURT: What case or cases are pending at this point? Is it just the case pending here or are there other cases pending in our federal court system?

MS. MARKANTONIS: There is a case against Judge Sebesta.

THE COURT: That's pending in the federal courts?

MS. MARKANTONIS: Yes, Your Honor. And the state attorney general – Attorney General's Office has filed a motion to dismiss that case.

THE COURT: Do you know who that's pending before?

MS. MARKANTONIS: No, Your Honor. But –

THE COURT: It's no problem. I didn't know if you were involved in that in some respect.

MS. MARKANTONIS: No, I'm not. I do know the case number is 2100, I believe.

THE COURT: 2100?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: Is that an '05 number?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: 05-2100. Where is that, Myra, if you can see it for us.

THE CASE MANAGER: That's actually pending before Judge Johnson, Nancy Johnson.

THE COURT: How did it get there, transfer from one of the ---she's working for who? Who is she a magistrate for, Judge Lake and who else? And Rainey?

THE CASE MANAGER: There was an order referring it from Judge Lake.

THE COURT: Okay. So, it's Sim Lake's case. Okay. All right. I can't think of anything else that we can ask or do. So, I will review your documents and , in essential, grant the motions that you've requested.

MS. MARKANTONIS: Thank you , Your Honor.

THE COURT: All right? All right. Thank you very much.

MS. MARKANTONIS: Thank you.

hearing. On November 16, 2006 Judge Kenneth M. Hoyt recused himself from the case. **(Appendix E).**

Transcript of the hearing on July 25, 2005 indicates that the subjects discussed and covered at the hearing are not consistent with the judges' rulings and sanctions against Donna Adams and Robert Hedrick that the suit was **frivolous**.

This **was not discussed** in the hearing nor were the constitutional issues discussed or any attempts made to protect the representation rights of Donna Adams. Despite the pleas and begging by both Donna Adams and Robert Hedrick to recognize some sort of status or appoint a guardian ad litem. Judge Kenneth M. Hoyt, in his own words, acknowledges that no attempt was made prior to half way thru the hearing to contact the Hedrick's regarding telephone appearance **(Appendix D)**:

"THE COURT: All right I think I need to correct the record. Our staff – or my office did not contact him."

Instead, the hearing was more about punishing Robert Hedrick and protecting the "status quo" of the attorney/court relationship than on justice and fair trial for Donna Adams Hedrick.

Petitioners allege that not only were the actions of Judge Kenneth M. Hoyt outside of his mandate and solely to protect the status quo of the attorney/court relationship; but that his inquiry into case number 05-2100 was outside of his discretionary powers and **raises the question as to whether his intentions were to unduly influence decisions it case number 05-2100 via "exparte" discussions with either Judge Johnson or Judge Lake.**

Acting in a ministerial capacity Judge Kenneth M. Hoyt decided to ignore medical statements from the primary care physician of Donna Adams Hedrick (Dr. Sphuler) that she cannot attend hearings without life threatening risks to **"go after Robert Hedrick"** and to issue sanctions to **"scare the Hedrick's off".**

The courts attempt with the aid of Liberty Mutual Insurance Company to **"to paint a picture of threats by the Hedrick's towards Judge Sebesta"** is not only incorrect, but borders on **"slander"**. Judge Sebesta was taken to court because he failed to rule on representation and to enforce Texas State Statutes that require the court to appoint a guardian ad litem in cases of incapacitated persons prior to issuing orders in the case at the state level. It now appears from the transcript that Judge Kenneth M. Hoyt may have unduly influenced the decisions in that case.

The Hedrick's have a high regard and respect for Judge Sebesta because, in a previous court action in his court Judge Sebesta protected the daughter of Robert Hedrick from the sexual and mental abuse of Mr. Hedrick's ex-wife and transferred custody of her to Robert Hedrick.

In fact, regardless of the court actions taken against Judge Sebesta by Hedrick's, he is their preferred judge to hear the case in state court; because of his "normal fairness" and "reputation". Judge Sebesta simply made a mistake in not protecting the rights of Donna Adams Hedrick and it is their contention, herein, that he is not the only judge to do so.

In addition, Judge Kenneth M. Hoyt violated the due process rights of Donna Hedrick by continuing with the hearing, without ruling on representation of Hedrick under power of attorney, next best friend, or spouse, without attempting to protect her rights to access to the court via telephone and without ruling on appointment of a guardian ad litem. In his on admission; he admits that no attempts were made by his staff prior to the date of the hearing to arrange phone contact for the Hedrick's or to hold a hearing in the physical status of Donna Adams Hedrick to attend court hearings. Issuance of a continuance for one (1) week seems to be a small price to pay to protect the rights of representation. The court did not do this.

Based upon these facts alone, the Supreme Court should grant this Petition for Writ of Certiorari.

Donna Adams Hedrick is within her constitutional rights to file **"separate"** suit for the injury on August 17, 2000 to which Liberty Mutual Insurance Company **was not relived of "liability"** for by the Texas Workers' Compensation Commission.

The issues and circumstances surrounding the August 17, 2000 injury were **"inappropriately"** filed and included by Liberty Mutual Insurance Company in **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas).

They were then **"inappropriately"** severed and abated by the state court. Then they were **"appropriately"** REMOVED by Donna Adams Hedrick to the District Court for the Southern District of Texas in **Liberty Mutual Insurance Company v. Donna Adams,** H-05-1974, (S.D. Tx.) to invoke the courts **"separate and original jurisdiction"** over the second injury to which the Texas Workers' Compensation Commission made no decision other than putting Liberty Mutual Insurance Company on notice that they were not **"relieved of liability** for this injury.

When the District Court failed to recognize this as a separate **"original case"** the Petitioners appealed to the 5th Circuit Court of Appeals *in re* **Liberty Mutual Insurance Company v. Donna Adams,** 05-20816 (5th Cir.) in an attempt to invoke original jurisdiction.

Texas Government Code, Chapter 81 prohibits non-attorneys from representing persons in court actions; yet non-attorneys' may represent persons in administrative hearings where the appeal from that hearing goes into court.

This is a case where the Petitioner, Donna Adams-Hedrick is a disabled person who is physically and mentally unable to represent herself in court proceedings without jeopardizing her health and in fact would risk possible death by attempting to attend court hearings or defend herself. This is a case where the state

court, the trial court and the appeals court were all placed on notice of the life threatening nature of Petitioners health condition.

On May 4, 2005 **(APPENDIX I)** the United States District Court, Houston Division was notified by Wanda P. Sphuler, primary medical provider to Donna Adams Hedrick that:

> **"I am the primary medical provider for Donna Adams (Hedrick). It is my understanding that there will be a series of court hearings held in the United States District Court at which Donna Adams (Hedrick) will be required to attend.**
>
> **Donna's medical condition is such that a serious asthma attack can be "triggered" by her being exposed to perfumes, after shave lotions, candle fragrances, excessive hear and stifling conditions.**
>
> **I do not recommend Donna be present at any hearings or meeting to be held in the confines of offices or judges chambers or any location that is not large enough for her to be able to isolate herself from the above items that could trigger a serious asthma attack. Her having to attend hearings in such a place can be very detrimental to her health condition and could result in a serious asthma attack."**

On June 6, 2005 the United States District Court was requested by Petitioners **(APPENDIX J)** *in re* **Liberty Mutual Insurance Company v. Donna Adams,** H-05-1974, and (S.D. Tx.) to either recognize the "next best friend status" of Robert Hedrick or recognize Robert Hedrick's standing under power of attorney or to appoint a Guardian Ad Litem for Donna Adams Hedrick.

Federal Rules of Civil Procedure 17 (c) states that:

"Whenever...an incompetent person has a representative, such as a general guardian, committee, or conservator, or other like fiduciary, the representative may sue or defend on behalf of the ...incompetent person."

On July 20, 2005 the United States District Court *in re:* **Liberty Mutual Insurance Company v. Donna Adams,** H-05-1974, (S.D. Tx.) **(APPENDIX K)** was notified by Wanda P. Sphuler, primary medical provider to Donna Adams Hedrick, that:

> **"I am the primary medical provider for Donna Adams (Hedrick). It is my understanding that there will be a series of hearing held in the United States District Court including one scheduled for 7-25-05 at 11:00 a.m. at which Donna Adams (Hedrick) will be required to attend.**
>
> **Donna's medical condition is such that a serious asthma attack can be "triggered" by her being exposed to perfumes, after shave lotions, candle fragrances, excessive heat and stifling conditions.**
>
> **I do not recommend Donna to be present at any hearings or meetings to be held in conditions where any of these threats may be present. She would need to be able to isolate herself from exposure to these things. I would recommend that if possible her participation be done by telephone or other remote means. Attending any hearings where she could be exposed to any of the items listed above could trigger an asthma attack would be very detrimental to her health condition and could result in a serious asthma attack."**

The federal district court **"failed"** to rule on the status of Robert Hedrick as this **"representative"** under FRCP 17(c) prior to making ruling in the case in violation of the Constitutionally guarantees of Donna Adams Hedrick, a disabled and incompetent person.

Federal Rules of Civil Procedure 17 (c) does not grant but **"mandates"** that the court:

"...shall appoint a guardian ad litem for ...an (sic)...incompetent person not otherwise represented in an

action or shall make such other order as it deems proper for the protection of....an (sic) incompetent person."

Failing to issue any ruling on the status of Robert Hedrick under properly executed power of attorney and as the guardian, fiduciary, and representative of Donna Adams Hedrick; the Court had a **"mandate"** to appoint a guardian ad litem to protect the interests of Donna Adams Hedrick as an incompetent person.

The district judge acted **"outside of this mandate"** and failed to do so prior to making rulings in the case affecting the due process rights of Donna Adams Hedrick. In addition, he failed to recognize and issue **"...such other order..."** required under FRCP 11(c) directed to the state court to protect the constitutionally guaranteed rights of Donna Adams Hedrick at the state court level.

Petitioners believe this was done to avoid disturbing the **"status quo"** of attorneys appealing from state administrative hearings. The result is an **"unequal"** and "**prejudicial**" treatment of disabled persons who cannot afford an attorney. If they do find an attorney he is not knowledgeable of the case that was presented at the administrative level. This is prejudicial against the disabled person.

This failure of the judicial system has created a **"common practice"** that is **repugnant** to the due process rights guaranteed by the Constitution of the United States and to the intentions of the **"founding fathers"** that all citizens be afforded **"fair and equal"** access to all branches of the federal government.

This **"common practice"** of allowing "non-attorney's" to represent persons, and in specific disabled persons, before state administrative hearings; yet prohibits that **"now most knowledgeable"** person from continuing the appeal, should the disabled person so desire; denies **ALL DISABLED PERSONS** of their individual rights to a **"choice"** of representation and to have the most knowledgeable person represent them in the appeals process from the administrative hearing.

The incompetent status of Donna Adams Hedrick has not been challenged at either the State or federal level.

To protect the due process rights of Donna Adams Hedrick the trial court was **"mandated"** to recognize the status of Robert Hedrick to represent her; or declare the power of attorney as invalid; or appoint a guardian ad litem prior to making any rulings in the cases. The trial judge did not do that; but instead, dismissed the case **"without due process"** and without any effort to protect the rights of a disabled person. Seeking to protect these rights the orders of the trial court were appealed to the 5th Circuit.

The 5th Circuit Court of Appeals, in turn, failed to protect these rights.

The 5th Circuit Court of appeals failed to recognize that there were two separate injuries with the August 17, 2000 injury falling under federal court jurisdiction and not state court jurisdiction. Since the Hedrick's control original suit as plaintiff in this injury **Louisville & Nashville R. Co. v. Mottley**, 211 U.S. 149, 150-53 (1908) does not apply.

In the same fashion, **Sitton v. United States**, 413 F.2d 1386, 1389 (5th Cir. 1969) does not apply since the second injury is, in fact, a injury not subject to being appealed from the Texas Workers' Compensation Commission.

Technically, there was no removal of the August 17, 2000 injury and the damages associated with that injury, since the proper method of taking that injury to the federal court would have been by separate suit. However, the attempts by LIBERTY MUTUAL INSURANCE COMPANY TO **"attach this injury"** to the March 29, 2000 injury entangled the August 17, 2000 injury in the state court; leaving no alternative for the Hedrick's but to attempt to remove it from the state court case.

If this premise is correct; then all orders of the 5th Circuit Court of Appeals and the United States District Court should be reversed and the injury and damages, including lifetime lose of wages, should be set for trial in the federal court.

The 5th Circuit Court of Appeals erred in dismissing the case and should have let the appeal stand. It did not.

At the state level Texas Rules of Civil Procedure (TRPC) section 173.3 under procedure for appointment of guardian ad litem:

"(a) Motion permitted but not required. The Court may appoint a guardian ad litem on the motion of any party or on its own initiative."

TRCP 173 requires that in civil litigation, a guardian ad litem must be appointed by the court as a **"personal representative"** of an incapacitated person to protect the interests of that person in any lawsuit where that person is a party. **Dawson v. Garcia**, 666 S.W.2d. 254, 265 (Tex. App. – Dallas 1984, no writ). The trail court can appoint a guardian ad litem under TRCP 173 on its own motion. **Smith v. Smith**, 720 S.W.2d. 586, 591 (Tex. App. – Houston [1st Dist.] 1986, no writ.

On November 21, 2003 Donna Adams Hedrick filed with the 239th Judicial District Court **(APPENDIX L)** a **Motion for Appointment of Guardian Ad Litem and Motion for Continuance to Respond to Discovery and Other Motions.** This motion was filed regardless of the fact that **no motion is required for the court to appoint a guardian ad litem.** However, the court was put on notice of the physical and mental condition of Donna Adams Hedrick and her incapability to defend herself. The court took no action.

Liberty Mutual Insurance Company failed to answer this motion that was properly served on them. In an attempt to fraud the district and appeals courts that they did properly file an objection; Liberty Mutual Insurance Company filed an answer on June 27, 2005 over one year later and only in response to federal court filings.

On January 16, 2004 Donna Adams Hedrick filed and objection to an oral hearing to sever and abate *in re:* **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628 (239th

Dist. Ct. Texas) with a request to appoint a guardian ad litem **(APPENDIX M).** Request was made that this be determined without hearing since no motion is required to request a guardian ad litem. The court failed to act.

With no regard to the **"due process"** rights of Donna Adams Hedrick, a disabled person, and a person incapable of defending herself; without appointment of a guardian ad litem, the 239th Judicial District Court issued an order Granting Severance and Abatement **(APPENDIX F).** This act is repugnant to the Constitution of the United States denying equal access to the courts for a disabled person.

At the federal levels the judicial system has failed to recognize or to protect the due process rights of Donna Adams Hedrick. In *re* **Liberty Mutual Insurance Company v. Donna Adams**, H-05-1974, (S.D. Tx.) the court **erroneously** connected the case removed to the federal court with previous attempts by the Hedrick's to secure the constitutional rights of Donna Adams Hedrick and instead attempted to avoid the constitutional issues **(APPENDIX B).**

The Honorable Judge Hoyt should have **"recluse himself"** from any decisions in this case since he had previously issued orders *in re* **Hedrick et al v. Texas Workers' Compensation Commission**, H-01-3416 (S.D. Tx) which was taken to force the Texas Workers' Compensation Commission to issue required subpoenas at the administrative hearings and under the rights of Donna Adams to file suit for EEOC claims. This case was used by the Honorable Judge Hoyt as a reason to dismiss case number H-05-1974 and to justify the sanctions and threats.

Petitioners allege that the failure of the Honorable Judge Hoyt to recluse himself from **Liberty Mutual Insurance Company v. Donna Adams,** H-05-1974, and (S.D. Tx.) at the start of the case also violates the constitutional rights of Donna Adams Hedrick to a fair trial.

Instead of protecting the rights of a disabled person the judicial system has issued contempt orders and sanctions to

"silence" the constitutional issues of the case strictly to maintain the status quo.

There are numerous violations of the constitutional rights of Donna Adams at both the state and the federal level which support the granting of this motion.

There is no evidence to indicate that the 239th Judicial District Court, the United States District Court, Southern District of Texas, Houston Division or the 5th Circuit Court of Appeals made any attempt to protect the constitutionally guaranteed right of Donna Adams Hedrick to be properly represented before the court. In the interest of justice all of the rulings of the court in any related cases cannot stand the constitutional test.

Under the Americans with Disability Act, Donna Adams Hedrick is considered to be a "qualified individual with a disability". As such, the court is required to attempt to accommodate her disability under the Equal Rights Protections clauses of the Constitution of the United States. Appointing a guardian ad litem, recognizing power of attorney status or next best friend status of Robert Hedrick, or holding hearings by telephone **are not** unreasonable accommodations for the court to make in protecting the equal rights to access to the courts and due process rights of Donna Adams Hedrick.

Neither the lower court nor the federal district court attempted to comply with either of these rights. *In re:* **Popovich v. Cuyahoga County Court of Common Pleas,** 276 F. 3d 808 (6th Cir. 2002) (en banc), cert. denied, 2002 WL 704377, No. 01-1503 (October 7, 2002) the state defendant was not immune from the plaintiffs' damages claims under Title II of the Americans with Disabilities Act (ADA). Adams/Hedrick invokes the decisions of the court in **Popovich** to complain of the lack of actions by the state court to protect the rights of Donna Adams Hedrick.

Among the rights protected by the Due Process Clause of the Fourteenth Amendment is the right of access to courts. The Due Process Clause has been interpreted to provide that "an accused has a right to be present at all stages of the trial where his

absence might frustrate the fairness of the proceedings". *Faretta v. California*, 422 U.S. 806, 819 n. 15 (1975). The Sixth Amendment "grants to accused, personally the right to make his defense. Parties in civil litigation have an analogous due process right to be present in the courtroom and to meaningful participate. See, *e.g. Popovich*, 276 F.3d at 813-14; *Helminski v. Ayerst Labs,* 766 F.2d 208, 213 (6th Cir.), cert. denied, 474 U.S. 981 (1985). These guarantees are protective of the due process principles of equal justice and fair treatment in our courts. Those who fail to appear in response to a court order cannot be sanctioned for that failure without being afforded due process. See, *e.g., Groppi v. Leslie,* 404 U.S. 496, 502 (1972). The state and federal courts both violated these Sixth (6th) Amendment rights.

Central both to the idea of the rule of law, and to our own Constitution's guarantee of equal protection, is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. **"Equal protection under the law is not achieved through indiscriminate imposition of inequities."** *Romer v. Evans,* 517 U.S. 620, 134 L. Ed. 2d 855, 866.[8]

Some states have recognized this deprivation of constitutional guarantees of equal access to the courts from administrative hearings. The legal communities as well as judges are divided on the issue. Only the United States Supreme Court may resolve an issue that affects millions of disabled Americans.

In re: **Nolan v. Department of Public Welfare,** 673 A. 2d. 414 (Pa. 1995) the court ruled that:

"Parties generally do not have a right to be represented by non-lawyers before Pennsylvania courts and most administrative agencies. However, non-lawyers are permitted to represent medical assistance applicants in appeals. The order prohibiting one from representing applicants is reversed."

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[8] As quoted in Leonard W. Schroeter's Treatise *The Jurisprudence of Access to Justice from Magna Carta to Romer v. Evans via Marbury v. Madison.*

The State of Pennsylvania recognizes that in medical assistance cases non-attorneys who represent in administrative hearings are allowed to continue to the end of the case to include the appeals process in Pennsylvania courts. Adams and Hedrick are asking the 5th Circuit Court of Appeals to declare the laws in Pennsylvania either **Constitutional** or **Unconstitutional** and apply that decision to Texas courts and administrative hearings where an appeal may be taken into court as a part of the process.

In re: **Cleveland Bar Association v. Comp Management, Inc**., 104 Ohio St. Ed 168, 2004 – Ohio – 6506 it was ruled that:

"Non lawyers who appear and practice in a representative capacity before the industrial Commission and the Bureau of Worker's Compensation in conformity to Industrial Commission Resolution No. R04-1-01 are not engaged in the practice of law."

On February 4, 2005, The Department of Justice and the Federal Trade Commission in their comments to Jeffery Alderman, Esq., Executive Director, Kansas Bar Association, 1200 S.W. Harrison Street, Topeka, KS, 66601 made the following proposed definition:

> **"The Justice Department and the Federal Trade Commission (FTC) believe that the definition of the practice of law should be limited to those activities where specialized legal knowledge and training is demonstrably necessary to protect the interests of consumers. Otherwise, consumers benefit from preserving competition between lawyers and non-lawyers."**
>
> **"The Justice Department and the FTC are concerned about increasing efforts across the country to prevent non-lawyers from competing with lawyers through the adoption of excessively broad unauthorized practice of law rules and opinions by state courts and legislatures."**

There is clearly a debate being conducted across the nation regarding this issue; requiring that the Supreme Court of the United States provide guidance. In the immediate case, Adams is

demanding that Hedrick represent her or be appointed representation by the court. Not to do so violates her constitutional guarantees of due process and equal access to the courts in light of her mental and physical disabilities.

Bar Associations across the nation are struggling with the issue of non-attorney's verses attorney's where low income and disabled persons are involved. In 1996 the Washington State Bar Association established the Systems Impediments to Access to Justice Committee (SIAJ) to look into how low income and disabled persons could obtain meaningful access to the civil justice system. The Honorable Cynthia Imbrogno, United States Magistrate Judge, Eastern District of Washington states in her Article **"Making a Case for Expanding Non-Attorney Representation in Some State Administrative Settings":**

> **"The SIAJ *Report* primarily focused on the administrative level as this seems to be where the need for solutions is greatest. There are 60,000 case filings a year in Washington for state administrative hearings, and it is believed that legislation slated as "welfare reform" is stressing not only state administrative processes, but also federal ones. For example, it was estimated that in 1997, more than 100,000 disabled children lost Supplemental Security Income (SSI). The lack of attorney representation for these tens of thousands of low-income persons at the administrative level was identified in the *Report* as serious impediment to access to civil justice. By the time the few appealed administrative cases (estimated at 1 percent) reach superior court, the damage has been done in terms of the record, which likely was not developed if there was no attorney involvement. The sheer numbers of those in need far exceed the best pro bono efforts of our Bar,"**

This would seem to be contrary to Adams/Hedrick's argument; but it is not. If the court is going to allow Hedrick or other non-attorneys to represent in state administrative hearings, but not proceed to the end of the appeals process in court a violation of constitutional guarantees occurs. If Hedrick and non-

attorneys cannot proceed into court they should be prohibited from representation in administrative hearings.

The attorneys will then have to step up to the plate and charge less for their services or the court must direct **pro bono quotas to all attorneys.** A violation of constitutional guarantees to equal access to the courts occurs in the case of low income injured workers. If only attorneys are allowed in the administrative hearings; the judicial system must provide the level of pro bono attorneys (by force of licensing requirements if required) to meet the equal access guarantees of the United States Constitution for low income injured workers so that the attorney who represents at the administrative hearing must continue to the end of the appeals. To break it up into two parts is detrimental to access to the courts for disabled or low income persons who cannot secure an attorney at the administrative level and certainly not at the court level. In fact, to allow this situation to continue to fester is **repugnant** to the very **core** of the foundation set for freedom in the Constitution of the United States.

The best reason for granting this motion comes from the judicial members themselves! The Honorable Cynthia Imbrogno[9] states:

> **"It is time for all members of our profession, lawyers and judges, to take an introspective look at, and leadership in, acknowledging there are needs of the society we serve that we currently are unable to meet. If that premise is accepted, then the separate questions of training, standards, regulation and supervision will require discussion as well. For the thousands of Washington citizens currently "hitting the concrete,' this cannot happen too quickly."[10]**

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[9] The Honorable **Cynthia Imbrogno,** United States Magistrate Judge, Eastern District of Washington, was chair of the Systems Impediments to Access to Justice (SIAJ) Committee for the Access to Justice Board and ex officio member of the Board's Jurisprudence of the Access to Justice Committee.

[10] **"Making a Case for Expanding Non-Attorney Representation in Some State Administrative Settings" by** The Honorable **Cynthia Imbrogno,**

The Supreme Court is being requested to either:

a. Allow **"non-attorney"** representation to continue on to the end of all appeals processes and declare Texas Government Code, Chapter 81 **"unconstitutional"** as it applies to appeals from state administrative hearings or;

b. That Texas Workers' Compensation Act, Title 5, Subtitle A, Section 410.006 which allows **"non-attorney"** representation in administrative hearings but not on into court is **"unconstitutional"** and;

c. To reverse all orders and decisions in all cases at both the state and federal level that have violated the constitutional rights of Donna Adams Hedrick and the rights of Robert Hedrick to represent her and further;

d. To direct the United States District Court to assume original jurisdiction over the 2nd injury on August 17th, 2000, the claims and damages and set it for trial; and further;

e. To direct the federal court and state court to recognize the status of Robert Hedrick to represent his spouse under power of attorney, as next best friend or appoint a guardian ad litem on the March 29, 2000 injury allowing it to continue separately in state court; and further;

f. To order that Liberty **Mutual Insurance Company v. Donna Adams,** No. 25628 be separated from **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas) to proceed concurrently as separate lawsuits.

f. Reverse and void all sanctions and attorney fees accessed against Donna Adams Hedrick and Robert Hedrick in all cases.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Donna Adams Hedrick

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